

18 February 1976

11C 76.0439

MEMORANDUM FOR: Director

FROM : General Counsel

SUBJECT : Congressional Disclosure of Classified Information

1. The purpose of this memorandum is for information only to assist you with respect to future occasions when the issue of the authority of Congress to declassify Executive branch material is raised. I do not intend to provide a detailed legal brief on the subject, although these are available if you are interested.

2. The position of the Department of Justice was set forth in a statement to the Governmental Relations Subcommittee of the Committee on Government Operations in the Senate on 30 May 1974 by Robert G. Dixon, Jr., then Assistant Attorney General, Office of Legal Counsel. The essence of his statement is contained in the following quote.

It would seem to follow in light of the President's special powers over foreign relations and national defense that the power and duty to classify national security information is equally within the executive domain. Moreover, because we are dealing with national security information, the executive claim to control the declassification decision is even stronger.

7 Of course under the Speech and Debate Clause of the Constitution, a committee or a member may, with impunity, disclose classified information, but this is power, not authority. Similar views were contained in Attorney General Levi's statement before the Senate Government Operations Committee on 6 February 1976, wherein he was discussing S.2893, the oversight bill submitted by the Chairman of the Senate Select Committee.

3. It is unfortunate that the article in the 17 February 1976 Washington Post (copy attached) appears to the average reader to be stating a position of CIA. It asserts that [] suggests if the Congress is to overrule the President on declassification, this should be done by a vote of two-thirds of both Houses.

Additionally, it is suggested that procedures should be established for "a member to appeal an executive branch decision that bars disclosure to an oversight committee and, if necessary, to the whole house of Congress concerned -- in executive session." As can be seen, neither of these suggestions is consistent with the Department of Justice's view, nor do I believe it would be the prevailing view within the Administration. I am fully in accord with the quoted Department of Justice position.

STATINTL

JOHN S. WARNER
General Counsel

Attachment

cc: SC/DCI

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